

FCC MAIL SECTION

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Federal Communications Commission

DA 96-1668

DISPATCHED BY

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket No. 96-206
Table of Allotments,	)	RM-8877
FM Broadcast Stations.	)	
(Raton, New Mexico)	)	

**NOTICE OF PROPOSED RULE MAKING****Adopted:** October 4, 1996**Released:** October 11, 1996

Comment Date: December 2, 1996

Reply Comment Date: December 17, 1996

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by N'Joy Broadcasting ("petitioner") requesting the allotment of Channel 249A to Raton, New Mexico, as the community's third local FM service. Petitioner also requests that if Channel 249A is allotted to Raton, it be allowed to amend its mutually exclusive application (BPH-960124MA) for Channel 243A to reflect the new channel without loss of cut-off protection, in accordance with Commission precedent.<sup>1</sup> Petitioner states its intention to apply for the channel, if allotted.

2. Petitioner states that it had petitioned the Commission for the allotment of Channel 249A at Raton and filed its application in a timely fashion. However, a competing application was also filed by David F. Phillips (BPH-960126MB). Further, neither application can be granted because the Commission currently has no basis upon which to resolve the mutual exclusivity, citing Bechtel vs. Federal Communications Commission, 10 F. 3d 875 (D.C. Cir. 1993). Therefore, petitioner states that the public interest would be served by allotting Channel 249A to Raton since it would enable the initiation of a second and third local FM service at an earlier date. Petitioner additionally suggests that Channel 299A can be allotted should an additional interest in use of Channel 249A at Raton be expressed.

3. We believe petitioner's proposal warrants consideration since the allotment of Channel 249A could provide Raton with its third local FM transmission service. In addition, the proposed allotment would accommodate both applicants' request for a Class A channel and avoid the necessity of a comparative hearing. Channel 249A can be allotted to Raton in compliance with

<sup>1</sup> See Albion, Nebraska, 10 FCC Rcd 11927 (1995); Lander, Wyoming, 46 FR 39604, August 4, 1981.

the Commission's minimum distance separation requirements at the proposed transmitter site specified in petitioner's pending application, which is 6.3 kilometers (3.9 miles) north of the community. Channel 299A can be allotted to Raton with a site restriction of 5.5 kilometers (3.4 miles) southeast of the community to avoid a short-spacing to Station KDZA-FM, Channel 300C1, Pueblo, Colorado.<sup>2</sup> Since there appears to be an additional equivalent channel for use by other interested parties, we propose to allow petitioner to amend its application to specify Channel 249A without loss of its cut-off protection.

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
<u>Option I</u>		
Raton, New Mexico	229C2, 243A	229C2, 243A, 249A
<u>Option II</u>		
Raton, New Mexico	229C2, 243A	229C2, 243A, 249A, 299A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before December 2, 1996, and reply comments on or before December 17, 1996, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Ms. Mary Alice Rateau  
N'Joy Broadcasting  
8264 South Cody  
Littleton, CO 80123  
(Petitioner)

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<sup>2</sup> The coordinates for Channel 249A at Raton are 36-57-18 North Latitude; 104-25-22 West Longitude. The coordinates for Channel 299A at Raton are 36-51-21; 104-22-16.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

Attachment: Appendix

## APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239) at its headquarters, 1919 M Street, N.W., Washington, D.C.